IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1902-MA-2014
Date of decision:-22.2.2018

Krishan Lal

...Applicant

Versus

Vinod Kumar

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.B.B.S. Randhawa, Advocate as
Legal Aid counsel for the applicant.

Mr.S.P. Soi, Advocate
for the respondent.

****

H.S. MADAAN, J.

Applicant – Krishan Lal has filed this application under Section 378(4) Cr.P.C. seeking special leave to appeal.

Briefly stated, facts of the case are that complainant – Krishan Lal had brought a criminal complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) against accused Vinod Kumar on the allegations that towards repayment of friendly loan taken by the latter from the former in January, 2010, the latter had issued a cheque bearing No.955872 in the sum of Rs.5,00,000/- drawn on South Indian Bank, Branch Sector 22-C, Chandigarh in favour of the complainant, however, on presentation, the cheque was dishonoured and returned with the remarks “Funds Insufficient”; that thereafter, the complainant had contacted the accused and apprised him of the circumstances and on the request of accused, the complainant waited for another four months and then presented the cheque again at the instance of accused but the old story was repeated; that the complainant was informed by the bank vide memo dated 31.10.2010 and then he got served a legal notice dated 12.11.2010 upon the accused calling upon him to make the payment within 15 days from the date of receipt of the notice but accused did not make the payment, as such the complainant had filed a complaint before Judicial Magistrate Ist Class, Dera Bassi.

After recording of preliminary evidence, the accused was summoned. Accused put in appearance and was admitted to bail. Notice of accusation under Section 138 of the Act was served upon him, to which, he pleaded not guilty and claimed trial.

The complainant adduced oral as well as documentary evidence.

Statement of accused was recorded under Section 313 Cr.P.C. in which the accused while refuting the incriminating circumstances appearing against him pleaded his innocence and stated that he did not have any dealing with the complainant and had not borrowed any money from him.

Accused did not lead any evidence in defence.

After hearing arguments, the learned trial Magistrate dismissed the complaint under Section 138 of the Act and acquitted the accused.

The complainant felt aggrieved and he has knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the applicant has submitted that the signatures on the cheque are admitted and the accused has not explained as to how the cheque came in possession of the complainant, therefore, drawing presumption under Section 139 of the Act, it is to be taken that cheque was issued on account of discharge of a financial liability. The trial Court fell in error in dismissing the complaint.

However, learned counsel for the respondent has countered such arguments stating that merely by admission of signatures on cheque, the necessary ingredients of offence under Section 138 of the Act are not fulfilled. The onus was upon the complainant to prove that the cheque in question had been issued by the accused on account of discharge of financial liability, which he failed to do, therefore, the complaint was rightly dismissed.

After hearing the counsel for the parties, I find that the trial Magistrate has dismissed the complaint for various reasons, which are as under:

(i) Failure of complainant to reveal his agreement with the accused with regard to loan in the sum of Rs.5 lakhs said to have been advanced by him to the accused.

(ii) Absence of any written instrument evidencing the loan transaction which is somewhat unusual.

(iii) Inability of the complainant to tell the exact date when the loan transaction had taken place.

(iv) Complainant saying that loan had been advanced by him in presence of his friend Lalit Kumar, however, Lalit Kumar was not examined by the complainant.

(v) Complainant stating that loan transaction had taken place in Kalgidhar Enclave at Zirakpur but then his inability to tell the exact place, where it had so taken place.

(vi) Inability of the complainant to show the exact mode by which the money had been advanced by him to the accused.

(vii) The complainant stating that entire money had been paid in cash but he was unable to tell the exact denomination of currency notes used for making the payment and further the exact number of currency notes and their description.

(viii) The complainant being unable to prove his sufficient financial capacity to advance a substantial amount of Rs.5 lakhs to the accused.

(ix) Inability of the complainant to prove his own salary or income.

(x) Non-production of record regarding bank account of complainant to show that he had sufficient funds with him when he had allegedly advanced a loan of Rs.5 lakhs to the accused.

(xi) Financial capacity of the complainant to advance the loan amount to accused not proved.

(xii) Difference in the ink used for appending signatures on the cheque from the ink used for filling up the cheque.

(xiii) Presumption under Section 139 of the Act getting rebutted.

(xiv) The case laws has also been discussed while dismissing the complaint.

I do not find any illegality and infirmity in the judgment passed by the learned trial Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Therefore, no ground is made out to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

(H.S.MADAAN)
JUDGE

22.2.2018
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No